REMARKS:

Claims 1 through 39 were presented for examination and were pending in this application. In an Official Action dated August 8, 2006, claims 1-39 were rejected. Applicants thank the Examiner for examination of the claims pending in this application and address the Examiner's comments below.

Applicants herein amend claims 1, 22, 23, and 39. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution of the application in a manner consistent with the Patent Office Business Goals, 65 Fed. Reg. 54603 (Sept. 8, 2000). In making these amendments, Applicants have not and do not narrow the scope of the protection to which Applicants consider the claimed invention to be entitled and do not concede that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicants reserve the right to pursue such protection at a later point in time and merely seek to pursue protection for the subject matter presented in this submission.

Based on the above Amendment and the following Remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections, and withdraw them.

Response to Rejection Under 35 USC 102(b)

The Examiner rejects claims 1-11, 13-16, 18, 21-30, 32, 33, 35, 38 and 39 under 35 USC § 102(b) as allegedly being anticipated by U.S. Patent No. 6,137,782 to *Sharon et al.* ("*Sharon*"). This rejection is now traversed.

Based on the above Amendment and the following Remarks, Applicants respectfully submit that for at least these reasons claims 1-11, 13-16, 18, 21-30, 32, 33, 35, 38 and 39 are

patentably distinguishable over the cited reference. Therefore, Applicants respectfully request that the Examiner reconsider the rejection, and withdraw it.

The agent 14 of *Sharon* includes an analyzer 38 that at most examines the frame and uses the source and destination address to determine whether a source or a destination address is unknown. (column 7, lines 7-15). In a rejection under 35 U.S.C. §102, each and every claim element must be present in the applied reference. *Sharon* does not disclose a "media module is adapted and configurable for monitoring and collecting data relating to traffic on the associated network segment corresponding to the network application and for analyzing the collected data for traffic information, wherein each media module is tailored for network analysis and is configurable to a monitoring mode or a focus mode to monitor and collect data" and "an application server module coupled to the at least one media module for receiving the collected data and the analyzed data and analyzing the collected data and the analyzed data for improving the performance of the network application and for configuring the at least one media module in response to the analyzed received data" as recited in claim 1. The agent 14 of Sharon merely analyzes the packet for addresses, and does not analyze collected data for traffic information as recited in claim 1. The CME 12 of Sharon is not configurable to a monitoring mode or a focus mode to monitor and collect data and does not analyze collected data and analyzed data received from a media module as recited in claim 1. Therefore, it is respectfully submitted that the rejection is improper and should be withdrawn.

Because claims 2-11, 13-16, 18 and 21 are dependent on claim 1, all arguments advanced above with respect to claim 1 are hereby incorporated so as to apply to claim claims 2-11, 13-16, 18 and 21.

Independent claims 22 and 39 are generally similar to claim 1. Claims 24-30, 32, 33, 35, 38 depend from claim 23, and independent claim 23 is generally similar to claim 1. Thus, Applicants respectfully assert that claims 22-30, 32, 33, 35, 38 and 39 are also patentable over *Sharon*, and therefore respectfully request that the Examiner reconsider and withdraw the rejection.

Response to Rejections Under 35 USC 103(a)

The Examiner rejects claims 12, 17, 19, 31, 34, and 36 under 35 USC § 103(a) as allegedly being unpatentable under U.S. Patent No. 6,137,782 to *Sharon et al.* ("*Sharon*") in view of U.S. Patent No. 6,754,181 to *Elliott et al.* ("*Elliott*"). This rejection is respectfully traversed.

Based on the above Amendment and the following Remarks, Applicants respectfully submit that for at least these reasons claims 12, 17, 19, 31, 34, and 36 are patentably distinguishable over the cited references, both alone and in combination. Therefore, Applicants respectfully request that the Examiner reconsider the rejection, and withdraw it.

The combination of *Sharon* and *Elliott* is improper.

35 U.S.C. § 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more others. After indicating that the rejection is under 35 U.S.C. §103, there should be set forth by the Examiner "(1) the difference or differences in the claim over the applied references, (2) the proposed modification of the applied references necessary to arrive at the claimed subject matter, and

(3) an explanation of <u>why</u> such proposed modification would be obvious." MPEP § 706.02; emphasis added.

Applicants respectfully assert that the combination suggested by the Examiner's rejection under 35 U.S.C. § 103 is improper. It is well settled law that when making a rejection under 35 U.S.C. § 103, the Examiner has the burden of establishing a <u>prima facie</u> case of obviousness. The Examiner can satisfy this burden "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references" in the manner suggested by the Examiner. <u>In re Fine</u>, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). "[E]lements of separate prior patents [and/or publications] cannot be combined when there is no <u>suggestion</u> of such combination anywhere in those patents [and/or publications]...; and a court should avoid hindsight..." (emphasis added; annotations within square brackets). <u>Panduit Corp. v. Dennison Mfg. Co.</u>, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987), citing <u>ACS Hospital Systems, Inc. v. Montefiore Hospital</u>, 220 USPQ 929, 933 (Fed. Cir. 1984), and <u>W.L. Gore & Associates v. Garlock, Inc.</u>, 220 USPQ 303, 313 (Fed. Cir. 1983). See also <u>Uniroyal Inc. v. Rudkin-Wiley Corp.</u>, 5 USPQ2d 1434, 1438-1441 (Fed. Cir. 1988). In fact, it is <u>impermissible</u> to use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. <u>In re Fine</u>, 5 USPQ2d at 1600.

It is respectfully submitted that in making the present rejection under 35 USC § 103, Examiner has employed impermissible hindsight in using the Applicants' disclosure and claims to conduct a search of the prior art to locate a reference directed to an application server module (that is, *Sharon*). The Examiner recognized, however, that *Sharon* did not include at least the server module performing accounting functions. Consequently, the

Examiner conducted an additional search to locate a reference that appeared to teach accounting functions (that is, *Elliott*). Once *Elliott* was identified, Examiner concluded that it would have been obvious to one of ordinary skill in the art to modify *Sharon* to include accounting functions on the basis of *Elliott*. Given the fundamental differences between the present invention and *Elliott* (or *Sharon*), however, Applicants respectfully assert that it is not proper to cite *Elliott* simply because *Elliott* discloses the element(s) of the claimed invention which the base reference *Sharon* lacks.

In support of the combination of the references with respect to claims 12 and 31, the Examiner contends that a person in the art would be motivated to combine the cited references because *Sharon* "consists of network monitoring function to monitor traffic" and "Accounting function with network is considered to be type of traffic." Applicant notes that the accounting function of claims 12 and 31 is not directed to the type of traffic but is directed to performing accounting functions when analyzing the data. The asserted motivation is irrelevant to the features of the claims. In order to support a rejection under 35 USC § 103, however, the Examiner must provide "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." In re Fine. The Examiner has not cited an objective prior art reference which provides an incentive, motivation, or suggestion for making the suggested combination. Also, the Examiner has not established by objective evidence that knowledge generally available to one of ordinary skill in the art would lead one to make the suggested combination. Thus, Applicants respectfully assert that the suggested combination is improper.

Even if the combination were proper, which Applicants do not concede, neither *Sharon* nor *Elliott* disclose or even suggest a "media module is adapted and configurable for monitoring and collecting data relating to traffic on the associated network segment corresponding to the network application and for analyzing the collected data for traffic information" or an application server module coupled to the at least one media module for receiving the collected data and the analyzed data and analyzing the collected data and the analyzed data for improving the performance of the network application and for configuring the at least one media module in response to the analyzed received data" as recited in 12 and 31. *Sharon* is described above. *Elliott* has been cited for providing accounting traffic, and does not disclose a media module. Thus, the combination of these references does not disclose or suggest such a media module of the claimed invention. Lacking the disclosure or suggestion of at least this claim feature, the references cannot render claims 12 and 31 unpatentable, and withdrawal of the rejection is respectfully requested.

In support of the combination of the references with respect to claims 17 and 34, the Examiner contends that a person in the art would be motivated to combine the cited references because *Sharon* "indicates the security of the network system" and "the usage of monitoring traffic system utilizing the CME 12, servers and other network element", and "it would be easier for the network management to have all the separate functions to be managed by each individual manager and process at the same time." Even if it is easier to have separate functions, there is no suggestion or motivation in *Sharon* to modify *Sharon* to include the managers and subsystems recited in claim 17 or the storing, dispatching, creating, and other limitations recited in claim 34. The Examiner has not cited an objective prior art reference which provides an incentive, motivation, or suggestion for making the suggested

combination. Also, Examiner has not established by objective evidence that knowledge generally available to one of ordinary skill in the art would lead one to make the suggested combination. Thus, Applicants respectfully assert that the suggested combination is improper.

Even if the combination were proper, which Applicants do not concede, neither *Sharon* nor *Elliott* disclose or even suggest a "media module is adapted and configurable for monitoring and collecting data relating to traffic on the associated network segment corresponding to the network application and for analyzing the collected data for traffic information, wherein each media module is tailored for network analysis and is configurable to a monitoring mode or a focus mode to monitor and collect data" and "an application server module coupled to the at least one media module for receiving the collected data and the analyzed data and analyzing the collected data and the analyzed data for improving the performance of the network application and for configuring the at least one media module in response to the analyzed received data" as recited in claims 17 and 34. *Sharon* is described above. *Elliott* has been cited for providing accounting traffic, and does not disclose a media module. Thus, the combination of these references does not disclose or suggest such a media module of the claimed invention. Lacking the disclosure or suggestion of at least this claim feature, the references cannot render claims 17 and 34 unpatentable, and withdrawal of the rejection is respectfully requested.

In support of the combination of the references with respect to claims 19 and 36, Examiner contends that a person in the art would be motivated to combine the cited references because *Sharon* indicates "the system consists of functionality of monitoring the traffic and filtered them according to the traffic data characteristics [] [b]y classify the traffic

into various flows, and reallocate the resource as necessary, add the flexibility and can void traffic backlog within the system." It is respectfully submitted that in making the present rejection under 35 USC § 103, Examiner has employed impermissible hindsight in using the Applicants' disclosure and claims to conduct a search of the prior art to locate a reference directed to media module (that is, *Sharon*). The Examiner recognized, however, that *Sharon* did not include at least the adaptive priority data filtering. Consequently, the Examiner conducted an additional search to locate a reference that appeared to teach adaptive priority data filtering (that is, *Elliott*). Once *Elliott* was identified, Examiner concluded that it would have been obvious to one of ordinary skill in the art to modify *Sharon* to include adaptive priority data filtering on the basis of *Elliott*. Given the fundamental differences between the present invention and *Elliott* (or *Sharon*), however, Applicants respectfully assert that it is not proper to cite *Elliott* simply because *Elliott* may disclose the element(s) of the claimed invention which the base reference *Sharon* lacks.

Even if the combination were proper, which Applicants do not concede, neither *Sharon* nor *Elliott* disclose or even suggest "media module is adapted and configurable for monitoring and collecting data relating to traffic on the associated network segment corresponding to the network application and for analyzing the collected data for traffic information, wherein each media module is tailored for network analysis and is configurable to a monitoring mode or a focus mode to monitor and collect data" and "an application server module coupled to the at least one media module for receiving the collected data and the analyzed data and analyzing the collected data and the analyzed data for improving the performance of the network application and for configuring the at least one media module in response to the analyzed received data" as recited in claims 19 and 36. *Sharon* is described

above. *Elliott* has been cited for providing accounting traffic, and does not disclose a media module. Thus, the combination of these references does not disclose or suggest such a media module of the claimed invention. Lacking the disclosure or suggestion of at least this claim feature, the references cannot render claims 19 and 36unpatentable, and withdrawal of the rejection is respectfully requested.

For all of the above reasons, Applicants respectfully assert that claims 12, 17, 19, 31, 34, and 36 are patentable over *Sharon* and/or *Elliott*, and that the combination is improper in any case, and therefore respectfully request that Examiner reconsider and withdraw the rejection.

The Examiner rejects claims 20 and 37 under 35 USC § 103(a) as allegedly being unpatentable under U.S. Patent No. 6,137,782 to *Sharon et al.* ("*Sharon*") in view of "Official Notice". This rejection is respectfully traversed.

Based on the above Amendment and the following Remarks, Applicants respectfully submit that for at least these reasons claims 20 and 37 are patentably distinguishable over the cited references, both alone and in combination. Therefore, Applicants respectfully request that the Examiner reconsider the rejection, and withdraw it.

Even assuming the "Official Notice" and the combination of *Sharon* and the "Official Notice" are proper, which Applicants do not concede, the combination of *Sharon* and the "Official Notice" does not render claims 20 and 37 unpatentable. Claims 20 and 37 depend on independent claims 1 and 23, respectively. There is no mention in the Office Action to point out in either *Sharon* or the "Official Notice" any "media module is adapted and configurable for monitoring and collecting data relating to traffic on the associated network segment corresponding to the network application and for analyzing the collected data for

traffic information, wherein each media module is tailored for network analysis and is configurable to a monitoring mode or a focus mode to monitor and collect data" as recited in claim 20, or similar "configuring" recited in claim 37. Thus, Applicants respectfully assert that claims 20 and 37 are also patentable over *Sharon* and/or the "Official Notice, and therefore respectfully request that the Examiner reconsider and withdraw the rejection.

Conclusion

In sum, Applicants respectfully submit that claims 1 through 39 as presented herein are patentably distinguishable over the cited references (including references cited, but not applied). Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them.

In addition, Applicants respectfully invite The Examiner to contact Applicants' representative at the number provided below if the Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,
MIKE MORAN, ET AL.

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